IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order No.93 of 2006
with
Civil Application No.l05 of 2006

Vasantkumar R Pandey .. appellant/plffs
vs
State of Maharashtra ..respondents

Mr Rajendra Narvankar with Mr B P Pandey for appellant
Mr A.R.Patil AGP for State

CORAM; A.M.KHANWILKAR J.

DATED 7.2.2006

P.C.

l. Heard counsel for the parties. Admit. Mr.Patil, AGP waives service for respondents. As short question is involved, the appeal is taken up forthwith for final disposal.

2. This appeal takes exception to the order passed by the trial court dated 24.l.2006 in draft notice of motion taken out in L C Suit Stamp No. 333 of 2006. The appellant - plaintiff filed suit before the trial court for the following reliefs:

a) That, it be declared that the action of the defendants in interfering with the plaintiffs suit business conducted by him at

the suit premises i.e. shop no. 3 ground floor, situated at Ebrahim Cassum Building, Arthur Road, Street No.2-4-4 A and Gas Work Lane No.34-256-66, Lalbaug, Mumbai 4000l2 is bad, illegal, void, nullity and unconstitutional;

b) That, the leave to file the suit against the defendant under section 80(2) be granted to the plaintiff;

c) That, the defendants, their servants, their agents, their officers, their subordinates and, their constituents and any person claiming through the defendants, be restrained by an order of permanent injunction of this Hon'ble court from in any manner directly or indirectly seeking to restrict or prevent the plaintiff from operating the said Video machines at suit premises being shop no. 3 ground floor, situated at Ebrahim Cassum Building, Arthur Road, Street No.2-4-4 A and Gas Work Lane No.34-256-66, Lalbaug, Mumbai 4000l2 without following due process of law;

d) That, ad-interim and interim reliefs in terms of prayer clause (c) above be granted to the plaintiff;

e) That, cost of the suit be provided for;

f) That, such further and other reliefs be granted to the plaintiffs as this Hon'ble court deem fit and proper"

3. The plaintiffs moved the trial court for urgent reliefs and prayed that notice under section 80 of the CPC to pursue the relief claimed in the suit be dispensed with. The trial court on considering the said request has passed the order which is impugned in this appeal, which reads thus:

"333/06 Adv Rajendra Mishra for plff
U.A. Adv Raheis for deft
Hd both sides.

Ld Adv Mishra on the point of dispensing of notice u/s 80 of CPC.

Hd Adv Raheis representing the State of Mah who has appeared with response to service of

draft notice of motion.

Considering the allegations of the plff, agst, the police machinery and pleading in the plaint that business of video games by the plff requires no licence. I find that in view of the prov of section 33 of Bombay Police Act. As submitted by Adv Raheis a licence is required to run a video game parlour without which it cannot be allowed to do such business. So in the given fact of such case no licence is required at all the suit itself is contrary to prov of law. So far such suit notice under section 80 of CPC cannot be dispensed with hence leave prayed for is rejected. Registrar is directed to return the plaint to the plff.

With respect to draft notice of motion since leave to registrar that suit is rejected and plaint is directed to return the question of considering the notice of motion does not survive".

4. After hearing the counsel for the parties I am in agreement with the submissions canvassed on

behalf of the appellant that the court below has committed manifest error in declining to dispense with the notice required under section 80 of CPC in the facts situation of this case. Besides, the court below by the impugned order has committed further error in returning the plaint to the plaintiff on the ground that the suit is contrary to the provisions of law, which order, I am assuming, is passed in exercise of power under Order 7 rule ll of CPC.

5. In so far as the request for waiving of notice under section 80 of CPC is concerned, in paras 22 and 23 read with para 35 of the plaint, in my opinion, the plaintiff has made out sufficient cause for accepting that request. In para 22 of the plaint it is stated that the defendant no.l recently started threatening the plaintiff to close down the business.It is further stated that a constable from the Kalachowky Police Station warned the plaintiff on l6.l.2006 that if within 48 hours, the plaintiff fails to remove all his said video machines from the suit premises they will not only forcibly seize the said video machines but they will also seal the suit premises and shall take further action under the Bombay Police Act against

the plaintiff. The grievance of the plaintiff is that such threats of forcible closure of business are being issued without taking recourse to issuance of notice under the provisions of law, to which the plaintiff will have an opportunity to respond. In para 23 it is stated that two constables from the defendant no.l police station again visited the suit premises on l8.l.2006 and warned the plaintiff to remove the said video machine and threatened them of forcible action if such directions are not complied with. In para 35 of the plaint the plaintiff requested the trial court to dispense with the requirement of section 80 notice looking to the emergent situation asserted by the plaintiff. There is nothing on record to suggest that the respondents disputed the allegations in the plaint referred to above or assured that no emergent action is being resorted to. If such is the case the court below ought to have dispensed with the requirement of section 80 or else suit to be filed by the plaintiff thereafter will be rendered infructuous and meaningless.

6. In so far as the directions issued by the trial court to return the plaint to the plaintiff appears

to be on auspices reason that licence is required to run video game parlour, without which it cannot be allowed to carry on such business and if it is a case of running business without licence,suit itself is contrary to the provisions of law. Once again this reasoning cannot be countenanced. This reasoning clearly overlooks the case of the plaintiff made out in the plaint that the plaintiff was not indulging in business which would warrant obtaining of licence. The plaintiff instead was running the business of providing video machines to the person intending to hire the said video machines to play on the same for limited period. Whether that stand can be accepted or not is a matter which will require examination. It is not the case that the suit is barred by the provisions of law exfacie so as to return the plaint to the plaintiff, which course can be adopted in exercise of power under Order 7 rule ll of CPC. Therefore even those directions of the trial court cannot be sustained.

7. Accordingly the order impugned in this appeal is set aside and instead original proceedings are restored to the file of the trial court to be proceeded in accordance with law.It is made clear

that all questions including the issue of maintainability of the suit are left open to be decided by the trial court on its own merits in accordance with law. Appeal allowed on the above terms with no order as to costs. In view of this order civil application also disposed of.